IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2329 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANPATBHAI DHANABHAI OAD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2329 of 2004

MR NK MAJMUDAR for Petitioner No. 1

MR PRADIP D BHATE, AGP for Respondent No. 1-4

NOTICE SERVED for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 03/12/2004

ORAL JUDGEMENT

#. Rule. Mr.Bhate, learned AGP, waives service of rule

on behalf of the respondents.

#. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the revisional authority, i.e. State Government dated 11.11.2003 in dismissing the revision application preferred by the petitioner confirming the order passed by the Collector, Surat dated 26.2.1996 in not renewing the quarry lease in favour of the petitioner.

#. It appears from the record that quarry lease of the petitioner came to be expired in the year 1993 and the petitioner was supposed to move the application for renewal within a period of 90 days prior to expiry of the said period of his licence and in spite of that the petitioner moved the application for renewal of quarry lease on 8.1.1996, i.e. after a period of 991 days. Considering the fact that the application was submitted belatedly, the Collector, Surat by his order dated 26.2.1996 rejected the application of the petitioner for renewal of quarry lease. Being aggrieved by and dissatisfied with the said order dated 26.2.1996 passed by the Collector, Surat rejecting the application of the petitioner for renewal of quarry lease, the petitioner preferred the revision application before the State Government. It appears from the record that as nobody remains present on behalf of the petitioner, the revision application came to be dismissed, against which, the petitioner preferred Special Civil Application No.5885 of 1999 and this Court remanded the matter to the State Government for deciding the revision application afresh and after hearing the petitioner, the impugned order dated 11.11.2004 came to be passed by the State Government.

#. Mr.Majmudar, learned advocate appearing for the petitioner, has submitted that so far as the petitioner is concerned, there was delay of only 991 days in making the application for renewal, however, in the case of one Kishorbhai Prajapati who is neighbour of the petitioner, the authority has renewed the quarry lease where even the application was submitted after 3335 days, and, therefore, there is discriminatory treatment given by the respondents. He submitted that, in fact, this Court in its order dated 11.11.2004 has also directed the State Government to consider the case of the petitioner

considering the case of Kishor Prajapati. He further submitted that, in fact, the same reason which is given by the said Prajapati for submitting the application for renewal of quarry lease belatedly will be applicable to the petitioner's case also, as, in fact, he is a neighbour of the petitioner.

#. Mr.Bhate, learned AGP, has tried to support the order passed by the revisional authority. He has submitted that, in fact, no material was produced before the revisional authority and/or Collector to show that the case of the petitioner is similar to that of the said Kishorbhai Prajapati. He submitted that, no evidence was placed on record to show about non-availability road and the petitioner could not make the application for renewal of licence, and, therefore, it is submitted that the revisional authority has rightly rejected the revision application.

#. Heard the learned advocates for the parties.

#. The revisional authority has found in its order that the petitioner has not produced any evidence in support of his ground of non-availability of the road just like the case of Kishorbhai Prajapati. Mr.Majmudar, learned advocate appearing for the petitioner, has submitted that, in fact, the petitioner's case is similar to that of the case of Kishorbhai Prajapati and there also, the ground which was given for non-availability of the road, and, in fact, he is neighbour of the petitioner. If the petitioner did not produce any evidence before the authority to compare his case along with that of Kishor Prajapati and did not produce any evidence with regard to non-availability of the road and for that the application for renewal lease was submitted belatedly, no fault can be found with the order of the revisional authority. However, in the facts and circumstances of the case, if the petitioner produces necessary material/evidence before the Collector with regard to non-availability of the road, then the Collector is directed to consider the same on its own merits and in accordance with law and the Collector shall come to the specific conclusion and finding whether the case of the petitioner can be compared with that of the case of Kishor Prajapati or not and shall take appropriate decision. The matter is remanded to the Collector, Surat for the aforesaid purpose.

#. With these observations and directions, the present special civil application is disposed of. Direct service is permitted.

(M.R.Shah,J)

(pathan)